THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.14527 of 2007

DATED : 30-08-2007

Between :

Vemulapalli Ramakrishna Prasad
…Petitioner.

AND

The Superintendent of Police,
West Godavari District
at Eluru and 4 others.
…Respondents.

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ORAL ORDER : (per the Hon'ble Sri Justice D.Appa Rao)

Heard learned counsel for the petitioner and the learned Assistant Government Pleader, representing the Advocate General appearing for respondents 1 to 4.

2. This writ petition of Habeas Corpus is filed by the petitioner for production of his daughter Ms. Vemulapalli Himaja, who is a minor, having born on 05-05-1990, before this Court, alleging that fifth respondent Sri K.Jaswanth had kidnapped her.

3. The police have produced both the alleged detenu and fifth respondent before this Court on 10-07-2007. The fifth respondent as well as the alleged detenu stated that their marriage has been

performed and they are living together. The alleged detenu represented that she would be subjected to torture if she is given to her father. She further represented that she married fifth respondent, who belongs to different religion, against the wishes of her father.

4. In the light of the above facts, this Court, by interim order, dated 10-07-2007, gave custody of the alleged detenu to fifth respondent, observing as under:

> "After all the marriage of a girl below the age of 18 years would be voidable in law and may be punishable under other enactments. The girl has categorically stated before this Court that absolutely there is no pressure from the 5th respondent and on her own accord she insisted the 5th respondent to have the marriage performed.
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> Till we examine the views expressed by the learned Judge in ***Makemalla Sailoo's*** case and in view of the fact that both the 5th respondent (who is alleged to have kidnapped the girl by name Himaja) and the minor girl by name Himaja are stated to have married, this Court directs the 5th respondent to keep the custody of the girl Himaja, pending further orders, in this writ petition."

5. When the matter was adjourned to 26-07-2007 for hearing, fifth respondent and the alleged detenu represented that their marriage was performed on 02-07-2007 by one Paster Rev. Balla John, Jesus Prayer Hall, Old K.D.Peta (P.O. & Village), Golugonda Mandal, Visakhapatnam District, and since then they have been living happily as husband and wife.

6. In view of the fact that both the alleged detenu and fifth respondent have stated in categorical terms that their marriage was performed, the question whether the marriage, assuming without admitting that the alleged detenu is a minor, is valid or not, need not be gone into in this writ petition.

7. At this juncture, it is useful to refer the decision rendered by a Division Bench of this Court in **MAKEMALLA SAILOO vs. SUPERINTENDENT OF POLICE, NALGONDA DISTRICT**[1], wherein it was observed as under:

> "Going by these provisions of law, a marriage solemnized in contravention of Section 5 (iii) of the Act is not a void marriage. Therefore there is nothing in the Hindu Marriage Act, 1955 which would make a marriage illegal if it is solemnized if the bride has not completed the age of 18 years. Although it is an offence under Section 18 of the Act, but in our view, it does not make the marriage an illegal marriage."

8. In view of the above said decision and in the light of the representation made by the alleged detenu and fifth respondent that their marriage had taken place and they are living happily, nothing further survives in this writ petition and the same is liable to be closed.

9. Accordingly, the writ petition is closed. However, there shall be no order as to costs.

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JUSTICE D.S.R.VARMA

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JUSTICE D.APPA RAO

30-08-2007
Msr.

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[1] 2006 (2) ALT 383 (D.B.)